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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,315	06/20/2003	Patrick T. Call	MESO0057	6960

7590 07/02/2004  
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EXAMINER
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RAEVIS, ROBERT R

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/601,315

Applicant(s)

CALL ET AL.

Examiner

Robert R. Raevis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 2-8 and 39-55 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 11, 12, 14-17 and 21-38 is/are allowed.
- 6) ☒ Claim(s) 1, 10, 13, 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9-29-03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Election of Group III is acknowledged.

Claims 10,13,18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 10, "enlarged" relative to what?

As to claim 13, "configured" how, "reduce" relative to what?

As to claim 18, "the sensor" lacks antecedent basis. Should "14" (line 1) read – 17--?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hayes.

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Hayes teaches (Figure 2) an impeller to induce air flow, comprising: a base plate 40 and plurality of vanes 42 on a surface of the plate, having a ratio of the vane height to the base plate diameter in the range from .075 (1 inch/13.25 inches) to .217 (2.88 inches/13.25 inches).

The impeller ratio is not exactly within 0.01 to about 0.2 as claimed, and the impeller does not speak of being an "impact collector".

As to claim 1, the .217 ratio (in the paragraph above) is "about 0.2" (last line of Applicant's claim 1). In the alternative, the "approximately" (col. 5, line 60) is suggestive of a blade height that is a bit smaller or larger, suggestive of application of a blade height of less than or equal to 2.65 inches (resulting in a ratio of exactly 0.2). In addition, the phrase "to function as a combined fan and impact collector" is expressly a statement of intended use, and thus no weight may be given to that phrase. In the alternative, the impeller relocates air and/or particulates, some of which subsequently remains in the impeller volume/walls.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Zaniewski.

Zaniewski teaches (Figure 4) an impeller to move air, comprising a base plate 25 and plurality of vanes 26 disposed on an upper surface of the base plate. The relative

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dimensions in the drawing suggest that the ration of the vane height to base plate diameter is in the range of .01 to .2.

Zaniewski does not provide actual dimensions for the vanes and plate, and the impeller does not speak of being an "impact collector".

As to claim 1, the relative dimensions of the vanes and plate in Figure 4 suggest the claimed dimensional ratio. In the alternative, it would have been obvious to one of ordinary skill to apply the apparent relative dimensions of Figure 4 in constructing Zaniewski's device because drawings are immediately suggestive of relative sizes. In addition, the phrase "to function as a combined fan and impact collector" is expressly a statement of intended use, and thus no weight may be given to that phrase. In the alternative, the impeller employ blades 37 to displace smoke filled gas, some smoke of which will adhere to the blades 37, and of course to the impeller as an entirety.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Epstein employes curved blades (Figure 12B) on a rotor with a housing (Figure 1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 7am to 3:30am. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

RCVP

RAEVS —